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JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER, E. A. WILCOX AND WILLIAM G. HALE

FROM CHESTER G. VERNIER

ATTEMPTS.

State v. Rains, Mont. 164 Pac. 540. *Attempt to murder.* Facts sufficient to constitute the crime of attempt to murder are not stated by an information charging that defendant attempted to murder R., and towards the commission of the crime started to walk to her home, and, meeting her on the highway, stopped her and struck her in the face, and compelled her to return to her home, and forced her to enter it and locked her in, he being possessed of a loaded revolver and loaded rifle and bottle of laudanum, by the use of all of which he, having the intent to murder her, did then and there attempt to do so, and that he failed and was prevented in the execution thereof by the fact that he took a pail to go for water, and after he had gone out and locked the door she escaped by a window; the facts alleged so limiting and characterizing the general allegations as to make them ineffectual, Rev. Codes, sec. 8894, defining an attempt as an act done with intent to commit a crime, and "tending," but failing, to effect its purpose, the facts alleged showing at most preparation, and not any act connected with any accomplishment of the purpose.

BASTARDS.

Ex parte Madalina, Cal. 164 Pac. 348. *Prosecution of father where mother of illegitimate child is a married woman.* Civil Code, sec. 195, provides that the presumption of legitimacy can be disputed only by the husband or wife or both of them. Pen. Code, sec. 270, provides that the parent of either a legitimate or illegitimate minor child shall be liable to a criminal prosecution, as each parent is liable under Civil Code, sec. 196a, to a civil action for its non-support. Held, that while under Pen. Code, sec. 270, the father of an illegitimate child may be prosecuted criminally for its non-support, a criminal proceeding will lie against the father only where the child is the illegitimate offspring of an unmarried woman, and will not lie in the case of a child which was born in wedlock though in fact illegitimate, since the state cannot raise the question of legitimacy.

ELECTIONS.

United States v. Gradwell, 37 Sup. Ct. Repr. 407. *Conspiracy to bribe voters at a congressional election.* A conspiracy to bribe electors at a congressional election, or to cause them to vote illegally at a primary election for the nomination of candidates for the United States Senate, cannot be regarded as one to defraud the United States, within the meaning of U. S. Crim. Code, sec. 37, punishing criminally a conspiracy "to defraud the United States in any manner for any purpose," in view of the origin, classification, and use made of this section, which was originally part of an act for the protection of the revenue, and now appears in a chapter of the Criminal Code devoted to "Offenses against the Operation of the Government" rather than in the chapter which deals with the "Offenses Against the Elective Franchise and Civil Rights of Citizens," and of the history and conduct and policy of the Federal government in dealing with congressional elections.

FORMER JEOPARDY.

Reil v. People, Colo. 164 Pac. 315. *Autrefois acquit—Answer.* Where defendant was acquitted of the charge of having had sexual intercourse with a female under 18, the acquittal was a bar to a subsequent prosecution for the non-support of the girl and her illegitimate child.

And if the acquittal was on the ground that the girl was over 18 and not on the ground that he did not have connection with her, the matter should have been set up by the state's answer to the plea.

Scott, J., dissenting.

POST OFFICE.

United States v. Kenofsky, 37 Sup. Ct. Repr. 438. *Mailing fraudulent claim through agency of an innocent superior officer.* A life insurance agent, who, in pursuance of a scheme to defraud the insurance company, delivered to his superior officer a fraudulent death claim, supported by false proofs, knowing that the claim would (as in fact it was) be mailed by the latter in the usual course of business to the home office for approval before payment, thereby violated the provisions of U. S. Crim. Code, sec. 215, for the punishment of any one who, having devised any scheme or artifice to defraud, shall, for the purpose of executing such scheme, "place or cause to be placed" any letter, package, or writing in any post office, to be sent or be delivered by the post office establishment.

SELF INCRIMINATION.

People v. Foders, Cal. 164 Pac. 22. *Requiring automobile drivers to furnish information in case of collision.* Pen. Code, sec. 367c, requiring the driver of an automobile colliding with any vehicle to stop and give aid, and to give information as to the number of his machine and his name and address, and making violation of any provision thereof an offense, does not compel him to give evidence against himself in violation of Const., art. 1, sec. 13.

STATUTE OF LIMITATIONS.

Sikes v. State. Ga. 92 S. E. 553. *Application of statute where prisoner is convicted for lesser offense.* The defendant was convicted for the offense of voluntary manslaughter, under an indictment charging him with murder, which was found approximately nineteen years after the homicide occurred. Held, his conviction can not be set aside upon the ground that the offense of which he was found guilty was barred by the statute of limitations, for there is no statute of limitations for the offense of murder, the crime charged in the indictment. The statute of limitations applicable in the trial of a criminal cause is that which relates to the offense charged in the indictment, and not that which relates to any minor offense of which the accused might be convicted under the indictment.